

To: Board of County Commissioners
Latah County
PO Box 8068
Moscow, ID 83843

via

Michelle Fuson, Director or Aimee Shipman
Planning and Building Department
Latah County
PO Box 8068
Moscow, ID 83843

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RECEIVED

MAR 20 2009

LATAH COUNTY

Re: Opposition to Rezone Application #780

Dear Commissioners:

Please accept these comments in opposition to Rezone Application #780.

Note: A hard copy and an ecopy of this document are being submitted. The ecopy is submitted to make it easier for you to access the exhibits submitted which are referenced by links rather than shuffle through piles of paper in an attempt to find them. Some references submitted as links are also attached to the physical copy of this document. Other link references mentioned are not attached since it is anticipated that these documents will be submitted by others in this matter

A Google Group website has been set up to allow you to access some of the material submitted by others opposing this rezone application online. The address of this Google Group is: <http://groups.google.com/group/stop-destructive-land-division-in-latah-county> Because of the nature of Google Groups, it may sometimes be necessary to click on several links to get to the document referred to. [A copy of this letter is also posted on the group site.]

So that your requirements that all written material, etc be submitted by March 20 at 5:00pm are adhered to, no material will be displayed on this Google Group site that wasn't submitted by that deadline, although the posting of some of this material submitted by the deadline may be delayed due to the nature of the posting process. After your decision on this matter is made and finalized, additional postings may occur.

This is a matter of to great importance to those of us who live on Moscow Mountain, and of great importance to many others in Latah County who are similarly situated. We humbly beg that you take the time to carefully read and to consider our comments before reaching your decision.

Assumption of Non-Innocence

So that your time is not wasted by reading unnecessary material, I am assuming that you are familiar with the details of the application at issue. I will not repeat them here, save for a few general remarks where necessary.

Further, there are several legal issues involved with this application. Opinions thereupon are expressed by both lay people and attorneys. Both may unintentionally or intentionally attempt to lead you into error. Please do not hesitate to consult with competent, informed, neutral legal counsel, if necessary. The ramifications of your decision in this matter are too important for the future of Latah County for them to be in error due to faulty legal opinions and/or deceptions.

Results of Zoning Commission Hearing in this Matter: Contaminated beyond Redemption

In asking this Board of County of County Commissioners to hear this matter anew, among others I submitted a letter demonstrating serious due process violations and other serious legal problems when this matter was heard by the county zoning commission. I believe that this letter is already part of the record in this matter. I therefore request that you give the so-called findings from the zoning commission's hearing no weight what-so-ever since that hearing most likely would not pass court scrutiny and because those findings are flawed beyond redemption by the errors previously committed.

I have attached the findings of the disputed hearing and the findings of a previous hearing on what was an almost identical application for the same property at issue. I invite you to examine them to see the stark differences between them and to see in connection with my previous letter the fundamental flaws of the disputed hearing at issue.

I therefore request that the commissioners hear this matter totally anew, and thus hear it totally untainted by matters originating in previous proceedings.

The Comprehensive Plan Strongly Protects Agricultural Land Use

You will receive ample testimony and photographic evidence showing that part of the land asked to be rezoned in this matter is productive agricultural land. Not only will you hear from a family whose members have farmed it for years and know it well first hand, but you will hear testimony from other experts. You will also hear testimony about the importance of farmland in Latah County and some of the pressures on that farmland.

Here's another consideration: the amount of arable land worldwide is diminishing. The world's population is increasing. Thus, the need and demand for food is increasing while

the amount of arable land needed to produce it decreases. Please see a [letter to the Latah County Planning Commission](#) on this subject which contains references to articles in *New Scientist*.

As time goes on, agricultural land becomes more and more important to our wellbeing and economy as a county, state, and country. Agricultural land will also increase in monetary value as the world demand for food increases. **But once productive agricultural land is lost, it is very likely to be gone forever.** In this context, it is important to examine and to take very seriously the elements of the Latah County Comprehensive Plan which refer to agricultural land and to the importance of agriculture to Latah County.

At the very beginning of the Latah County Comprehensive Plan are found the objectives of the plan. Here is the very **first** one:

Preservation of agricultural and forest land uses to ensure the continued viability of an agriculture and forest based economy in rural Latah County.

Goal from the Economic Development Element of the plan:

To foster agriculture and forestry and their supporting activities.

Policy from the Economic Development Element of the Plan:

Protect agricultural and forestry lands from scattered development.

It would be hard for a comprehensive plan to make a stronger statement about the importance of agricultural land. A careful reading of the [Latah County Comprehensive Plan](#) finds many other goals and polices that about growth and housing location that compliment the explicit, vigorous protection and celebration of productive agricultural land in Latah County. For example:

Encourage growth to occur in existing cities or areas likely to be annexed into existing cities.

Encourage low density residential development to occur in a pattern which minimizes both conflicts with existing land uses and public service costs.

Direct growth away from areas with important environmental features which will be negatively impacted by development.

Objective: Preservation of the rural character of Latah County to ensure the protection of the cultural, scenic and natural amenities presently found in the county.

It does not take much imagination to see how the above four items compliment, if not directly relate to the preservation of agricultural land. The message is clear: keep residential development from interfering with and decreasing farming viability and opportunities in Latah County.

Therefore, when a rezone request seeks to destroy farmland in production for over 80 years, it must be rejected on the basis of the undeniably clear, cogent, and overpowering objectives, goals, and policies of the Latah County Comprehensive Plan protecting agricultural land and farming alone.

Please correctly include in your Findings of Facts on this matter clear, unambiguous statements unequivocally asserting that the property proposed to be rezoned by this proposal contains what is undeniably productive agricultural land **in tillage for the last 80 years.**

But there's even more conflicts with the comprehensive plan by the proposed rezone application than its conflict with agriculture:

Effects on Groundwater of Proposed Rezone

Preface

A few years ago the Latah County Commissioners passed an ordinance creating a so-called water resource overlay zone. The district court voided that ordinance.

It is important to understand that the overlay ordinance was voided because the passing of such an **ordinance** by county commissioners (**legislation**) exerting control of water resources for an area was in conflict with the statutory authority of the state water resources board.

The mandated, by law, consideration of water resource elements as found in a comprehensive plan when hearing deciding zoning and permit matters was neither addressed nor affected by the court decision about the legislative impropriety of the county enacted overlay zone.

The requirement to consider the water resources elements of the county comprehensive plan remains fully in effect for **quasi-judicial** proceedings involving zoning matters.

Repeat: By law, the commissioners are required to consider all elements of the comprehensive plan when making a rezone decision. Those elements include the groundwater and other water resources elements.

Content

The Latah County Comprehensive Plan, section 8, states as county policy:

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3. **Maintain sustainable groundwater resources and prevent degradation of groundwater quality.**

The importance of considering the proposal at issue's effect on sustainable groundwater cannot be overstated. The habitability and property values of hundreds of homes located on Moscow Mountain are at stake here. Many Moscow homeowners have experienced greatly reduced flow to their wells in recent years. Several homeowners have lost their wells; they have then been forced to drill deeper, more expensive, lower yield wells.

In order to understand why this proposal will affect the sustainability of groundwater on and near Moscow Mountain, it is necessary to understand the basic local hydrology.

When dealing with groundwater issues it should be observed there is a great deal of uncertainty and controversy about the aquifers which underlie the Palouse itself, the shallow Wanapum and the deeper, wide area Grande Ronde. There are several organizations that study and report on Palouse area aquifers, for example, 1 2. [Palouse Basin Aquifer Committee, Palouse Water Conservation Network.]

Not only are the size, depth, and current water volume of these aquifers not known with any great accuracy, but it is also not known whether or not either of these aquifers is of the type that can deplete/disappear quickly from causes (for example, seismic events) other than by withdrawal by pumping (as has happened elsewhere in the world where large water resources have disappeared almost overnight).

Despite the uncertainty and controversy about the Palouse aquifers, there are some facts that are not uncertain and not controversial. The level of main aquifer that supplies Moscow and the surrounding areas on the Palouse with water, the Grande Ronde, has been declining for many years as shown by the following graph from a Palouse Basin Aquifer Committee report.

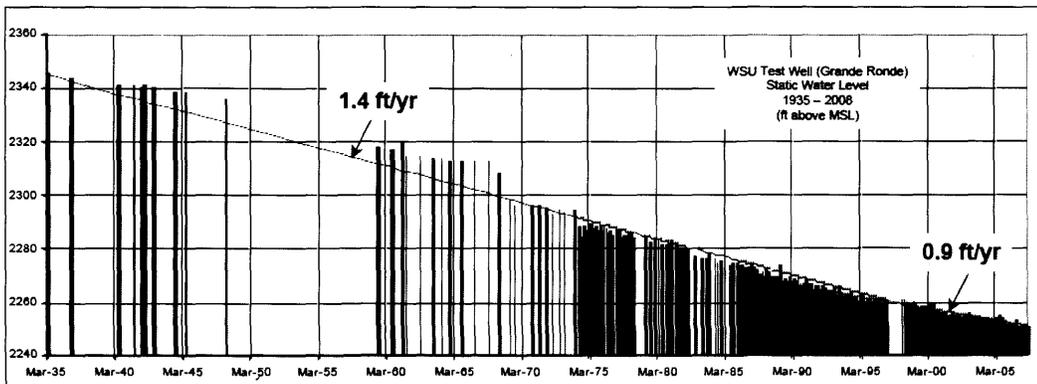


Figure 4: Static Water Level, WSU Test Well, 1938-2008

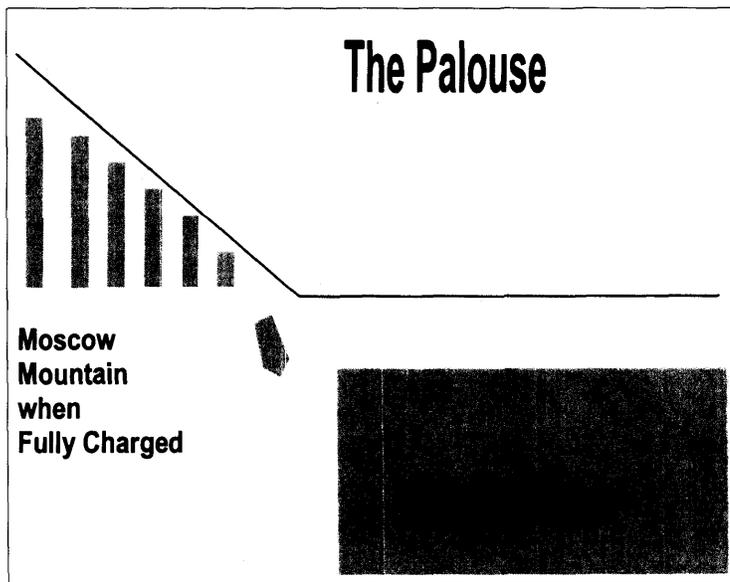
Graph. [Reference: PBAC Report. See page 5. Caution: long download.]

Hence, there is very justifiable, strongly felt local concern and caution regarding water usage and conservation, and regarding the careful husbanding of the local aquifers by many Palouse area residents, especially those residing on Moscow Mountain.

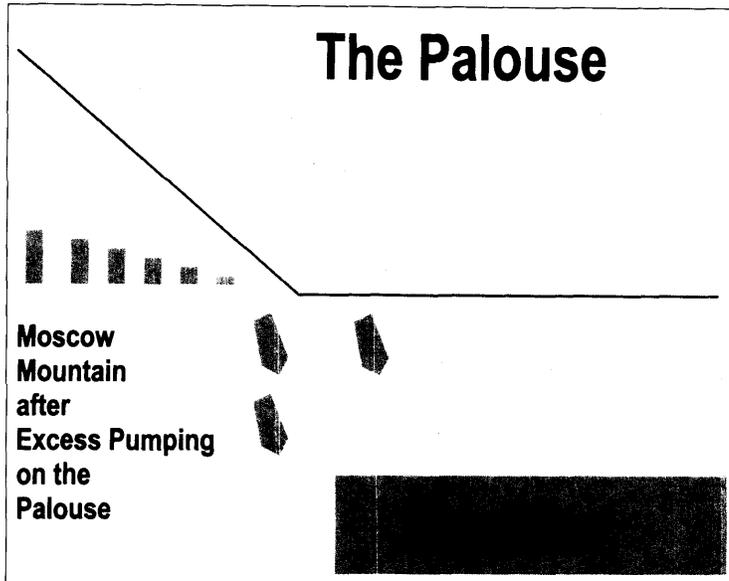
Several hundred Latah County residents live on the Palouse Range – locally known as Moscow Mountain. Moscow Mountain property owners do not draw their ground water from the Wanapum or Grande Ronde aquifers, but rather from fractures in the granitic batholith which forms Moscow Mountain.

This source of water for Moscow Mountain property owners is connected to the two main lower elevation aquifers near the base of Moscow Mountain.

Until a few years ago the fractured granite source of ground water provided a steady, reliable source of water to Moscow Mountain property owners.



Corresponding to the decline of the two lower elevation aquifers, especially the Grande Ronde, Moscow Mountain property owners began to experience reduced flow from their wells. Some have lost wells altogether, and thus were forced to expend money to drill deeper, but lower yield wells. (The deeper a well is drilled into granite, the more dense the granite is, the lesser size the fractures are, and thus the lesser the amounts of water the fractures can carry.)



Professional, licensed hydrologists have explained that hydrostatic pressures cause this accelerated flow of water from the fractured granite into the two lower aquifers. In other words, as either of the two lower aquifers decline, water is sucked out of the fractured granite that provides water to Moscow Mountain property owners. Please see [1](#) [2](#) [3](#) [4](#) [5](#) [6](#). [It is very important to note from the evidentiary standpoint and therefore for the weight given to this evidence, two of these reports are sworn affidavits.]

It is important to note that the closer to Moscow Mountain the withdrawal of water from the two main Palouse aquifers occurs, the greater and more immediate effect of that withdrawal is on the fractured granite aquifer of Moscow Mountain. Withdrawals from Moscow Mountain itself have the same immediate effect.

Hence, the withdrawal of water in Moscow from either of the main aquifers has a much less immediate effect on the Moscow Mountain fractured granite aquifer than a withdrawal from Moscow Mountain itself or from the areas immediately downslope from Moscow Mountain.

In other words, water withdrawn for the proposed rezone and other areas or downslope (for which the approval of this rezone application would set a precedent), will create an severely adverse effect on available water to current Moscow Mountain residents. This effect would be immediate and sizeable.

Hence, the rezone application would be clearly contrary to the policy of the Latah County Comprehensive Plan to "**maintain sustainable groundwater resources** and prevent degradation of groundwater quality." Hence, the board should reject the proposed

rezone on the ground of its adverse impact on Moscow Mountain groundwater sustainability and availability alone.

The loss of water sufficient to maintain their households not only is disruptive of and expensive to Moscow Mountain property owners/families, but ultimately will reduce the value of their properties – little or no water translates into a much lower market value for these properties.

Lower market values translate directly to loss of property tax revenue and the attendant effect on governmental services.

It doesn't take much imagination to see what the loss of or reduction in a reliable water source means in terms of human stress, dislocation, loss of assets, loss of economic stability, and misery.

The Latah Board of County Commissioners can help prevent this unnecessary human stress, dislocation, loss of assets and economic stability, and misery by rejecting the rezone application at issue. In fact:

One of the main functions of a comprehensive plan and a zoning ordinance is to provide and to promote land use stability and predictability. This stability and predictability allows those investing in lands and properties to depend on not being suddenly adversely impacted, financially and/or otherwise, by unpredictable, adverse changes of surrounding land uses. Planning and zoning are tools to protect residents of and investors in residential properties and homes, assuring them of a secure future, not tools to be used as a weapon to disenfranchise them.

Also please note with respect to surface water resources:

The Latah County Comprehensive Plan, section 8, states as county policy:

2. Prohibit development that significantly pollutes or degrades the natural environment.

In a letter opposing this rezone application Kyle and Lisa Hawley describe the probable adverse consequences that this proposed rezone would have on springs and ponds located on their adjacent property which they have owned for **35 years**.

The applicants for this rezone recently purchased the property at issue for allegedly about half of its market value at the time.

Please refuse to enable land speculators with no roots what-so-ever in the community of Moscow Mountain to deceptively muscle through a **precedent setting** rezone application. The result of approval of this rezone will be the withdrawal of scarce groundwater resources which withdrawal likely will be accompanied by very adverse impacts on the present residents of Moscow Mountain, and whose results include very

probable adverse impacts of surface water cherished and used by residents, like the Hawleys, **of 35 years or more.**

Please refuse to enable land speculators with no roots what-so-ever in the community of Moscow Mountain to deceptively muscle through a **precedent setting** rezone application by unconscionably ignoring, downplaying, or perverting the clear, plain policies of the Latah County Comprehensive Plan with respect to water resources, especially groundwater resources.

Please correctly include in your Findings of Facts on this matter clear, unambiguous statements that the effects of this proposed rezone include the high probability that the diminishing groundwater resources of many current residents in the area would be seriously and adversely impacted.

The Application Fails to Meet the Statutory Requirements of the Latah County Zoning Ordinance with Respect to Rezones

The Latah County Zoning Ordinance gives explicit conditions, **all** of which must be met, in order for the rezone to be approved:

6.01.02 REZONE CRITERIA

The Zoning Commission may recommend the Board of Latah County Commissioners approval of a rezone application if the Zoning Commission finds that the proposed rezone conforms to **each** of the following criteria:

1. The rezone is in accordance with the goals and policies of the Comprehensive Plan.
2. The rezone, and the uses it permits, shall not be detrimental to or incompatible with the surrounding area, and the uses permitted in that area.
3. The rezone must provide some public benefit that exceeds any costs imposed upon the public.
4. The rezone shall not impose a significant burden to any public services.
5. The rezone shall not be a spot zone.

Notice the language: "that the proposed rezone conforms to **each** of the following criteria:"

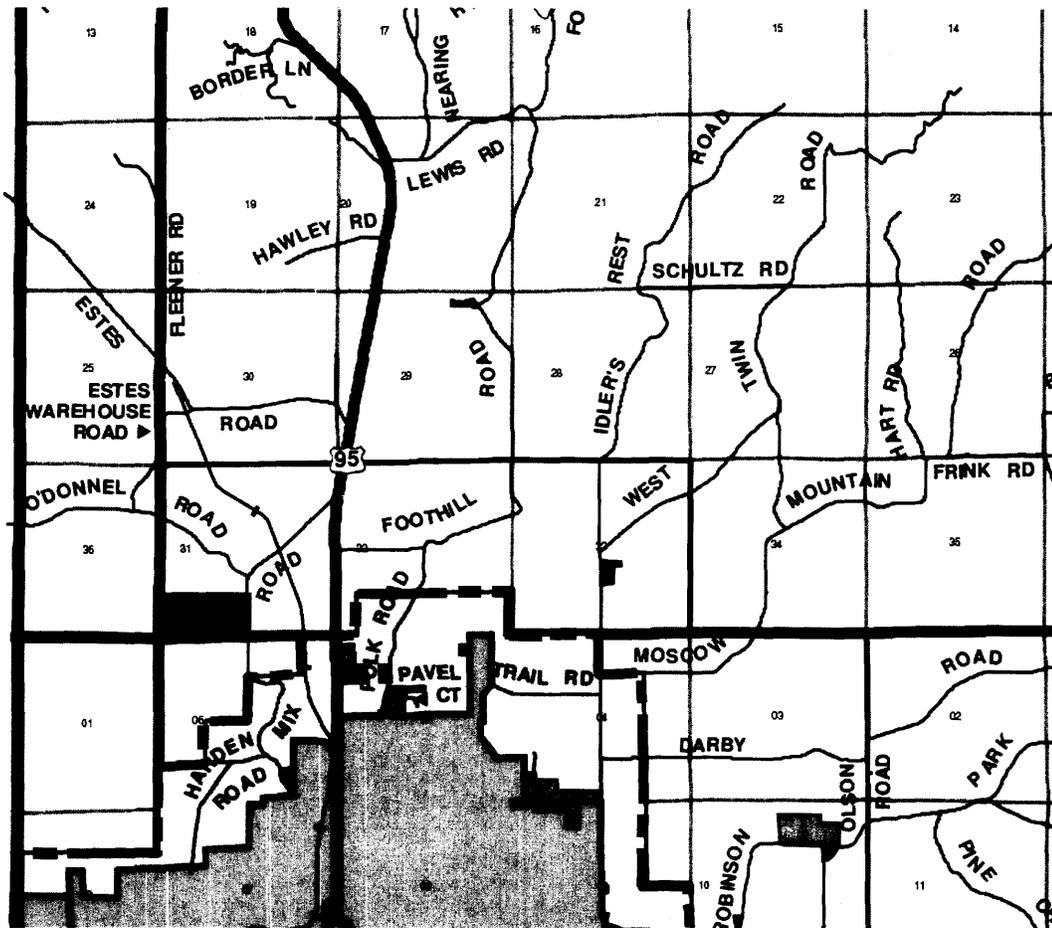
Therefore, if the proposal fails **any** of the above conditions, then, by statute, the proposal must be rejected. [There are conditions for exceptions to the above, but none of the actions here-to-fore taken in this matter has invoked those exceptions, hence they cannot be considered at this point. Even if they could be considered, it would not

make any difference. No mitigation of adverse impacts on groundwater sustainability and availability is possible.]

Detailed arguments have been presented herein and by many others demonstrating that the proposal is not in accordance with the Latah County Comprehensive Plan. Hence, the proposal fails to meet the first condition of the ordinance requiring that compliance. Hence, by law it must be rejected because it fails to meet 1. above..

Spot Zoning Prohibited by Idaho Case Law

This proposal is clearly a spot zoning application.



The nearest other Rural Residential zone to the proposed rezone is about three miles away on Mix Road, just east of Highway 95 and just north of the Moscow city limits and present area of impact. It is located on land that was once very productive farmland.

This Rural Residential zone was not created by Latah County, but rather by the City of Moscow! The city at one time claimed this area now zoned Rural Residential was within its area of impact. It then unilaterally made the zone change without the concurrence (or active participation) of the Latah County Commissioners. (How the city and the developer accomplished this would make a good plot for a trashy, 10 cent pulp novel.)

There are no Rural Residential Zones created by Latah County within many miles of the proposed rezone.

The progenitor of Idaho case law on spot zoning is *Dawson Enters., Inc. v. Blaine County*, 98 Idaho 506, 514, 567 P.2d 1257, 1265 (1977). Summarizing *Dawson*, the Idaho Supreme Court in *Evans v. Teton County*, 139 Idaho 71, 76, 73 P.3d 84, 89 (2003) wrote:

A claim of "spot zoning" is essentially an argument the change in zoning is not in accord with the comprehensive plan. See *Price*, 131 Idaho at 432, 958 P.2d at 589. There are two types of "spot zoning." *Dawson Enters., Inc. v. Blaine County*, 98 Idaho 506, 514, 567 P.2d 1257, 1265 (1977). Type one spot zoning may simply refer to a rezoning of property for a use prohibited by the original zoning classification. *Id.* The test for whether such a zone reclassification is valid is whether the zone change is in accord with the comprehensive plan. *Id.* Type two spot zoning refers to a zone change that singles out a parcel of land for use inconsistent with the permitted use in the rest of the zoning district **for the benefit of an individual property owner**. *Id.* at 515, 567 P.2d at 1266. **This latter type of spot zoning is invalid.** *Id.* [Emphasis added.]

The proposal at issue is clearly a type two spot zoning proposal. But even if it were to be considered a type one spot zoning proposal, it would fail the test of being in compliance with the comprehensive plan, hence must be rejected on the basis of Idaho case law.

The applicants allegedly purchased the property proposed for rezoning for about \$2,000 per acre. Even if they gave away 95 acres but sold four ten acre parcels for \$12,000 - \$15,000 per acre (the going rate of for ten acre view parcels sitting upslope from the rolling Palouse), they would receive as gross profit 1.8 - 2.3 times (\$220,000 - \$340,000) as much as they originally invested. Thus, this proposal is made **for the benefit of the property owners**. It is a type two spot zoning proposal and must be rejected by the dictates of Idaho case law.

Therefore, the rezone proposal asks for a zone change that singles out a parcel of land for use inconsistent with the permitted uses in the rest of the zoning district **for the benefit of an individual property owner**. Therefore, by Idaho case law, and by condition 5. above of the Latah County Zoning Ordinance, this proposal must be rejected.

Repeating condition rezone condition 2:

2. The rezone, and the uses it permits, shall not be **detrimental** to or incompatible with the surrounding area, and the uses permitted in that area.

It is clear from copious testimony of water professionals (some of this testimony is sworn) that the rezone proposal will adversely impact the water supply of current residents. This is certainly **detrimental**. There can be no mitigation of this detrimental effect. There is only a limited amount of water. Therefore, the proposal at issue fails another statutory test it must pass in order to be approved.

Further, the language in the zoning ordinance that allows a rezone request not meeting all of the five conditions above to be permitted provided that there is a credible mitigation plan does not apply in this case since the groundwater sustainability and availability impacts cannot be mitigated.

Please correctly include in your Findings of Facts on this matter clear, unambiguous statements that the proposed rezone change is primarily for the benefits of the individual owners and that the proposed rezone would be detrimental to the current uses in the area.

Summarizing thus far: The proposal at issue fails to meet three of the five conditions legally required for it to be approved (1, 2, and 5). If it fails only one condition, by law it then must be rejected. Thus, it is dead three times over.

Considerations about the Weight of Testimony of Various Parties, and of Public Benefit, Community, and Wellbeing

For the commissioners, the decision in this matter must be based on statutory law and their interpretation of the meaning and applicability of various elements of the comprehensive plan and of the county zoning ordinance. The commissioners have a certain amount of discretion to interpret and to apply elements of the plan where those elements may be less than precise. The same is true of the language of the zoning ordinance.

Commissioners and other public officials are human beings, many with compassion for their neighbors and fellow inhabitants of this planet. It is laudatory and inspiring that these compassionate persons are influenced by just plain old decency and goodness when using exercising their discretion where such exercise is allowed.

Those of us opposed to this rezone believe that we have the full weight of the law, of the Latah County Comprehensive Plan, and of the Latah County Zoning Ordinance on our side. However, we also believe that we have goodness, decency, and neighborliness on our side also.

Recently I sent you a letter regarding the weights that should be given to those testifying with respect to the comprehensive plan and the values so contained.

The gist of that letter was this:

The values found in the plan should reflect the values of those under its jurisdiction: those living in or owning property in the unincorporated area of the county.

Anyone should be allowed to testify on plan values, but those who do not live or own property in the unincorporated areas should have no weight assigned to their remarks because such remarks are not of those expressing the values of the people directly subject to the plan.

Those who actually reside in the unincorporated areas of the county are the ones whose day to day lives are most affected by the Latah County Comprehensive Plan. Those that simply own land are also affected by the plan, but not nearly as much as the residents.

The residents have invested not only their money but other important aspects of their lives. They have fought forest fires, fed wildfowl and wildlife, pulled their neighbors out of the ditch in the winter, planned and enjoyed community wide Halloween and Fourth of July parties, taken care of each others children, pets, and livestock, shared their neighbors' joys and sorrows, maintained trails on the mountain, and helped each other in many different ways.

Although some people who live outside the unincorporated area may own farmland in it, most of us welcome them, applaud their productive efforts, and support their industry. However, there is another breed of outside owners that, quite frankly, most of us do not care for -- these are the land speculators who care little for those of us who have made our homes here and are part of a nurturing community of involved, decent, and caring neighbors.

Part of the rezone application before you contains a poorly disguised ruse of pretending to offer land for preservation. Others will demonstrate to you what a smokescreen this offer is. It is basically a despicable lie, **because the land alleged to be preserved under the application (and thus the claim of public benefit) will very likely remain the same as it is now if the rezone application is denied. The applicants are giving absolutely nothing of benefit away, but posturing themselves as community minded heroes by this flimflam offer!**

Even if this so-called offer of conservation/preservation were sincere, ironclad, and would really accomplished something that would not happen if the rezone application were denied, **this rezone proposal would still fall way short of the statutory conditions needed for approval for reasons which are given above.**

There is nothing wrong with buying land and developing it to make a profit, except, for example, if the profit comes at a huge loss for others, or the land is not divided in

accordance with the Latah County Comprehensive Plan and Latah County Zoning Ordinance.

As an active citizen and a former county planner, I have seen many land division/subdivision proposals. Some are very carefully thought out, compatible with the surrounding uses, and have but marginal impact on the surrounding landowners/residents. In these cases, the ethical developers are satisfied with a reasonable profit and with the feeling of treating nearby landowners/residents with concern, empathy, and decency.

That is clearly not the case with the rezone application at issue. It is a pig disguised in an ill-fitting evening gown. In the place of demonstrating concern and empathy for the surrounding users, the outside-the-community applicants offer an empty proposal deceptively attempting to posture it as a public benefit while they stand to reap huge financial benefits but suffer none of the adverse impacts.

I hope that the board sees through this scam despite all the deceptive, gaudy hype that the applicants' attorney pitches it with.

Therefore, I urge the board, when exercising whatever discretion is allowed them under law in this matter, to apply that discretion on the side of decency and the community wellbeing of caring, longtime residents and neighbors, not on the side of take-the-money-and-run outsiders.

The Dangerous, Precedent Setting Nature of the Rezone Proposed

Although I.C. 67-6512 states that the issuance of special use and conditional use permits "shall not be considered as establishing a binding precedent to grant other special use permits," there is **no such language** in the enabling sections of the Local Planning Act of 1975 for rezones and subdivisions.

In fact, once a rezone in a particular area has been granted, other nearby or similarly situated rezone applicants will successfully argue that the first rezone approval provides a precedent for approving their consequent application – that if the statutory conditions were present allowing the initial rezone, then they are present for other nearby or other similarly situated rezone applications, and therefore, these subsequent rezones must be granted.

Hence, if the rezone at issue is approved it will set a precedent for rezoning similarly situated properties including many between the location at issue and the north city limits of Moscow. **Therefore, there is no doubt that there are thousands of acres of productive agricultural land between the land at issue and the Moscow city limits which could be lost.** In fact, approving this rezone would set a precedent for rezoning of much of the lands, much of it farmland, between Moscow Mountain and Idaho Highway 8.

The impacts of just four additional homes in the proposed rezone are likely to be severely adverse on the groundwater supplies of long-time residents, among other adverse impacts.

With the precedent setting nature of this rezone application, many more such rezones are likely downslope from the area at issue. More homes located on lots in these downslope homes would likely suck Moscow Mountain nearly dry. This would leave current residents whose assets are principally their homes and land financially devastated, not to mention all the other miseries they would suffer -- and this to benefit non-community land speculators who care not a whit about the effects of their potential profit taking on those longtime residents whose lives are impacted by their proposed opportunistic profit taking.

To prevent this kind of morally outraging exploitation is one of the reasons the following **overall objectives** of the Latah County Comprehensive Plan were enacted:

Preservation of agricultural and forest land uses to ensure the continued viability of an agriculture and forest based economy in rural Latah County.

Preservation of the rural character of Latah County to ensure the protection of the cultural, scenic and **natural amenities** presently found in the County.

Please note that in the above objective **natural amenities** include ground and surface water resources.

Other applicable policies from the comprehensive plan:

Protect agricultural and forestry lands from scattered development.

Direct growth away from areas with important environmental features which will be negatively impacted by development.

Encourage growth to occur in existing cities or areas likely to be annexed into existing cities.

The following language from the Latah County Zoning ordinance is also designed to prevent this kind of morally outraging exploitation:

2. The rezone, and the uses it permits, shall not be **detrimental** to or incompatible with the surrounding area, and the uses permitted in that area.

As noted above approving the rezone application at issue would set a **precedent allowing productive agricultural land to be taken out of production in favor of scattered development**. If this rezone application is approved, the zoning commission would have no legal grounds for denying the rezone of nearby or similarly properties which contain in part productive agricultural land.

Such an approval and the precedent it sets would be completely contrary to some of the most strongly worded goals and policies of the Latah County Comprehensive Plan.

I hope that this set of commissioners do not want to go down in history as the ones that opened the floodgates of land speculation and scattered development in the agricultural lands that the Latah County Comprehensive Plan was enacted so carefully and passionately to protect for all of us and all of our descendants in our wonderful county.

Thank you very much for your consideration.

/s/ Wayne A. Fox

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**BEFORE THE ZONING COMMISSION
COUNTY OF LATAH, STATE OF IDAHO**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING A PETITION BY TERRAMARK-MICHAEL HOFFMAN TO REZONE (RZ #731) APPROXIMATELY 36-ACRES OF A 135-ACRE PARCEL OF LAND FROM AGRICULTURE/FORESTRY (A/F) TO RURAL RESIDENTIAL (RR). THE PROPERTY IS LOCATED ON FOOTHILL ROAD, ¼ MILE NORTH OF THE INTERSECTION OF FOOTHILL ROAD AND LEWIS ROAD, MOSCOW, IN SECTIONS 16 AND 17, TOWNSHIP 40 NORTH, RANGE 5 WEST, B.M., IN LATAH COUNTY, AND REFERENCED AS ASSESSOR'S PARCEL NUMBERS RP40N05W177220A AND RP40N05W165606A.

WHEREAS, Michael Hoffman made application for rezoning on September 22, 2006; and

WHEREAS, this matter came before the Latah County Zoning Commission for public hearing on November 1st and was continued until November 15th, 2006; and

WHEREAS, having reviewed the application, including all exhibits entered, and having considered the issues presented by the applicant and the opponents,

THE LATAH COUNTY ZONING COMMISSION, STATE OF IDAHO, AFTER DUE DELIBERATION AND CONSIDERATION, HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

I. FINDINGS OF FACT

1. The subject parcel is 135 acres.
2. The subject parcel is zoned Agriculture/Forestry (A/F).
3. The applicant requests to rezone thirty-six (36) acres from Agriculture/Forestry (A/F) to Rural Residential (RR) to create four additional residential building sites.
4. The surrounding properties are zoned Agriculture/Forestry (A/F).
5. The subject parcel is designated "Rural" on the Comprehensive Plan Land Use Map. The Comprehensive Plan states, "This area should be protected from conversion to more concentrated residential, commercial, or industrial development; however, sites within this area may be suitable for consideration for further low density residential development."
6. Surrounding uses include agricultural, timber and residential.

7. The existing use of the parcel is agriculture. Neighboring property owners testified that the property has been farmed continuously for 80 years.
8. The North Latah County Highway District (NLCHD) submitted written testimony that the proposal, if approved, would be required to dedicate an appropriate and sufficient amount of public right-of-way for public highway purposes, be made responsible to pay for and/or construct, as the District may determine, any access and/or public highway improvements occasioned by the Applicant's development of the rezoned property. The letter also states that the NLCHD would prefer one proposed access onto Foothill Road (Exhibit #11).
9. The Idaho Department of Transportation (IDT) submitted written testimony that they would call upon NLCHD for left and/or right turn lanes to accommodate the increased traffic from the local road approach at the intersection of Lewis Road and Highway 95 North (Exhibit #26).
10. The applicant submitted written testimony from the Latah County Sheriff's Department stating that they do not anticipate a significant impact or cost to the public for providing services to the proposed residential sites. The North Central District Health Department submitted written testimony stating the property could support additional subsurface septic systems for single-family dwellings on 5- to 6-acre parcels. No testimony was submitted from the Moscow Rural Fire District or Moscow School District on potential impacts of the proposed residences on those public services.
11. There was testimony that there are several smaller, non-adjacent properties further to the north of the proposed rezone.
12. Neighboring property owners testified the primary objective of the Latah County Comprehensive Plan is to protect lands designated for agricultural uses from development and they testified regarding the conflicts of this proposal with said policy. Specifically, they testified the rezone would be a spot zone, and they stated the proposal would remove agricultural land from production and would convert agricultural land into residential land.
13. Neighboring property owners testified that the residential properties to north of the proposed rezone were not previously in agricultural production because of topographic constraints and presence of less productive soil. Additionally, they testified that the topography of the land directly north of the proposed rezone is drastically more steep and rocky, and is comprised of timber land, which is not conducive for agriculture.
14. Neighboring property owners testified that the granting of this proposal would encourage other land owners in the vicinity to rezone their properties, which are currently in agricultural production, to a higher-density residential zoning. They testified that approval of this application would set a precedent allowing neighboring property owners to rezone their properties, and that this is wholly inconsistent with the Comprehensive Plan which seeks to encourage growth in existing cities or areas likely to be annexed into existing cities.

15. Neighboring property owners testified the proposed development is a departure from the current pattern of residential development adjacent to the north boundary of this property. The proposed development is for four new home sites, each with a minimum of five acres. There is currently only one residence located on the parcels directly to the north of the proposed development. The properties that abut the proposed rezone to the north are greater than 17-acres in size and are owned by two owners, Sid Eder and William Anderson. Sid Eder owns a 17-acre parcel, which is comprised of three tax parcels, and has one residence on the property. William Anderson owns a 54-acre parcel comprised on five tax parcels with one residence on the property.
16. The applicants' property is located within the "Rural" designation on the Comprehensive Plan Land Use Map. Testimony was given that the incremental development of this area, which has been farmed continuously for 80 years, promotes a scattered pattern of growth that is inconsistent with the goal of protecting this area from conversion to more concentrated residential, commercial or industrial development.
17. Neighboring property owners testified that the addition of more residences would negatively affect existing uses, cause roadway damage due to the increased traffic off of Highway 95 North onto Lewis Road and onto Foothill Road, and cause more accidents on the corner of Highway 95 and Lewis Road.
18. Neighboring property owners testified that the proposed rezone would be a departure from the current zoning designation of adjacent properties, which are zoned Agriculture/Forestry, the allowed land uses, other adjacent land uses which are predominately agricultural uses, and the other adjacent parcel sizes which are larger than those new parcels in the proposed rezone.
19. Testimony was given that the additional residential properties would cause problems for adjacent agricultural operations. It was stated that the occupants of the new residences close to agricultural production areas commonly complain about noise, dust, smoke and pesticide use, all of which are common in this area and common in the current zoning designation for this and adjacent properties.
20. Testimony was given that the property is currently in agricultural production and that all of the soil on the property is comprised of highly productive dry-land soils. Neighboring property owners testified that once agricultural land is taken out of production and homes are placed on the property it is not possible to return the land to agricultural production. Additionally, they testified that taking land out of agricultural production and converting it to housing would have a detrimental effect on the area's agrarian economy.
21. Testimony was given that this proposal would be considered a spot zone due to the inconsistency with adjacent parcel sizes and the allowed uses, and the fact that the physical characteristics of this property make it uniquely different from non-adjacent property located further north that has smaller parcel sizes.

**BASED ON THE ABOVE FINDINGS OF FACT, THE ZONING COMMISSION ENTERS
THE FOLLOWING:**

II. CONCLUSIONS OF LAW

1. The Community Design Element of the Latah County Comprehensive Plan seeks to ensure a pattern of planned growth which results in the orderly and attractive development of Latah County. There was discussion that the proposed rezone is not consistent with this element, as the rezone conflicts with existing agricultural activities that abut the site to the south and west and that the property is currently and has been farmed for the last 80 years.
2. The Population Element of the Latah County Comprehensive Plan seeks to ensure that population growth is accommodated in an orderly pattern. The non-adjacent area with residences to the north of the proposed development were described as being a better fit for residences due to the topographic change in character from the agricultural lands to the south and west. Additionally, the property is currently in productive agriculture and the proposed development would take the land out of production. This element of the Comprehensive Plan also seeks to encourage growth in existing cities or areas likely to be annexed into existing cities. The proposed development is not near any incorporated area or existing public services and therefore has no chance of being annexed.
3. The Economic Development Element seeks to promote economic diversification, foster agriculture and forestry, as well as provide for land uses appropriate to local and regional economic needs. There was discussion that the proposal conflicts with this element as the site is almost entirely bounded by agricultural land currently in production.
4. The goal of the Public Services, Facilities and Utilities Element of the Latah County Comprehensive Plan is to provide an orderly pattern of development which will ensure adequate public facilities and services without excessive costs. The applicant received written testimony from the Latah County Sheriff's Department stating that the proposed rezone will not result in excessive costs in providing services to the site. The North Central District Health Department submitted written testimony stating the property could support additional subsurface septic systems for single-family dwellings on 5- to 6-acre parcels. The Idaho Department of Transportation (IDT) submitted written testimony that they would call upon NLCHD for the necessary highway improvements (left and/or right turn lanes) at Highway 95 and Lewis Road to accommodate the increased traffic from the local road approach which could result in excessive costs to the public.
5. The Transportation Element seeks to promote an efficient and safe transportation system in Latah County. Written testimony from the NLCHD stated that they would require the Applicant to dedicate an appropriate and sufficient amount of public right-of-way for public highway purposes, be made responsible to pay for and/or construct, as the District may determine, any access and/or public highway improvements occasioned by the Applicant's development of the rezoned property. The Idaho Department of Transportation (IDT) submitted written testimony that they would call upon NLCHD for the necessary highway improvements (left and/or right turn

lanes) at Highway 95 and Lewis Road to accommodate the increased traffic from the local road approach which could result in excessive costs to the public.

6. The Housing Element seeks to encourage the development of a variety of housing type so land suitable for development. The proposed development is located land that has been in productive agriculture for the last 80 years and the proposed development would take the land out of production and is therefore not suitable for development.

7. The School Facilities and Student Transportation, Special Areas, Hazardous Areas, Implementation, and Recreation Elements of the Comprehensive Plan were determined to be not applicable to the proposed development.

8. The Comprehensive Plan seeks to preserve agricultural and forest lands to ensure the continued viability of agriculture and forest based economy. The proposed development of four new residential sites on this property would take agricultural land in production out of production, which is not in accordance with the objectives of the Comprehensive Plan.

9. The Comprehensive Plan seeks to cluster housing of higher density residential uses in and around areas with adequate public services. The proposed development is scattered away from any existing public services and/or any cities and is on productive agricultural land, which is not in accordance with the objectives of the Comprehensive Plan.

10. As required by §6.01.02(1) of the Latah County Land Use Ordinance, the Zoning Commission has reviewed the proposal as it relates to the Latah County Comprehensive Plan. The Zoning Commission concludes that this application is not consistent with goals and policies of the Latah County Comprehensive Plan.

11. As required by §6.01.02(2) of the Latah County Land Use Ordinance, the Zoning Commission has reviewed the proposal and determined that the rezone is not compatible with the surrounding area and the uses permitted in that area.

12. As required by §6.01.02(3) of the Latah County Land Use Ordinance, the Zoning Commission has reviewed the proposal and determined that the rezone will impose some costs upon the public that exceed the benefits.

13. As required by §6.01.02(4) of the Latah County Land Use Ordinance, the Zoning Commission has reviewed the proposal and determined that the rezone will impose a significant burden to any public services.

14. As required by §6.01.02(5) of the Latah County Land Use Ordinance, the Zoning Commission has reviewed the proposal and determined that the rezone is a spot zone.

III. DECISION

Based on the above Findings of Fact and Conclusions of Law, the Zoning Commission recommends to the Latah County Board of Commissioners denial of the application to rezone the subject property from Agriculture/Forestry (A/F) to Rural Residential (RR).

PASSED BY THE ZONING COMMISSION OF LATAH COUNTY THIS ____ DAY OF _____, 2006.

Wayne Sprouse, Chairman
Zoning Commission

**BEFORE THE ZONING COMMISSION
COUNTY OF LATAH, STATE OF IDAHO**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING A PETITION BY BGB LLC. TO REZONE (RZ #780) APPROXIMATELY 40-ACRES OF A 135-ACRE PARCEL OF LAND FROM AGRICULTURE/FOREST (A/F) TO RURAL RESIDENTIAL (RR). THE PROPERTY IS LOCATED ON FOOTHILL ROAD, ¼ MILE NORTH OF THE INTERSECTION OF FOOTHILL ROAD AND LEWIS ROAD, MOSCOW, IN SECTIONS 16 AND 17, TOWNSHIP 40 NORTH, RANGE 5 WEST, B.M., IN LATAH COUNTY, AND REFERENCED AS ASSESSOR'S PARCEL NUMBERS RP40N05W177230A AND RP40N05W165616A.

WHEREAS, BGB LLC. made application for rezoning on November 19, 2008; and

WHEREAS, this matter came before the Latah County Zoning Commission for public hearing on December 17th; and

WHEREAS, having reviewed the application, including all exhibits entered, and having considered the issues presented by the applicant and the opponents,

THE LATAH COUNTY ZONING COMMISSION, STATE OF IDAHO, AFTER DUE DELIBERATION AND CONSIDERATION, HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

I. FINDINGS OF FACT

1. The subject parcel is 135 acres.
2. The subject parcel is zoned Agriculture/Forest (A/F).
3. The applicant requests to rezone forty (40) acres from Agriculture/Forest (A/F) to Rural Residential (RR) to create four additional residential building sites with lots ranging in size from 7 acres to 15 acres. As rural homesites these lots are subject to increased assessed valuation and associated tax revenue. The remaining ninety-five (95) acres will remain in Agriculture/Forest.
4. The surrounding properties are zoned Agriculture/Forest (A/F).
5. Surrounding uses include agricultural, timber and higher and lower density residential.
6. The subject parcel is designated "Rural" on the Comprehensive Plan Land Use Map. The Comprehensive Plan states, "This area should be protected from conversion to more

**BEFORE THE ZONING COMMISSION
COUNTY OF LATAH, STATE OF IDAHO**

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6. The subject parcel is designated "Rural" on the Comprehensive Plan Land Use Map. The Comprehensive Plan states, "This area should be protected from conversion to more

concentrated residential, commercial, or industrial development; however, sites within this area may be suitable for consideration for further low density residential development.”

7. The existing use of the parcel is agriculture and it is currently in agricultural production.
8. The applicant's submission materials included an aerial photograph map showing one hundred and nine (109) addressed structures within a 6700 foot or approximate 1 ¼ mile radius of Section 17 in which the subject property is located (Exhibit #2E).
9. The applicant's representative, Jim Westberg, testified that the proposal will implement conservation design principles by providing low density housing while conserving farmland and the environment.
10. Neighboring property owners testified the primary objective of the Latah County Comprehensive Plan is to protect lands designated for agricultural uses from development and they testified regarding the conflicts of this proposal with said policy. Specifically, they testified the rezone would be a spot zone, and they stated the proposal would remove agricultural land from production and would convert agricultural land into residential land. Additionally, they testified that taking land out of agricultural production and converting it to housing would have a detrimental effect on the area's agrarian economy and food production capability. Testimony was also given that the additional residential properties would cause problems for adjacent agricultural operations.
11. Jim Westberg, the applicant's representative, testified that the subject property lies south of the Nearing 1st, 2nd, and 3rd Additions and Tatkinmah Phase 1 and 2 and east of Hideaway Hills Addition which are all existing higher density rural subdivisions. He further stated that the subject property's close proximity to this higher density housing is indicative of the area's residential character.
12. Jim Westberg testified that the fifty-two (52) acres north of the proposed rezone area on the subject property are proposed to be donated to the Palouse Land Trust at the time of short plat approval. The Board of Directors of the Palouse Land Trust submitted written testimony formally confirming acceptance of the proposed donation of fifty-two acres of the subject property with assurances that the property will remain undeveloped, and to the extent possible, will remain in agricultural production (Exhibit #2M).
13. Jim Westberg further stated that the forty-three acres to the south of the proposed rezone area on the subject property will be designated a conservation area via a conservation easement and will be protected from further residential development. Mr. Westberg also stated that the applicant would retain drilling rights on the forty-three acres due to concerns about the wells on the four proposed lots (Exhibit #2B).
14. Jim Westberg testified that the proposed development would include covenants on the potential lots that would include residential construction to green building standards; 2,000 gallon water holding tanks on each lot regardless of well production; underground utilities; residences constructed to architectural committee standards; no open burning; no livestock or

livestock fencing; and xeriscaping requirements to reduce water usage (Exhibit#27). The proposed covenants also include the establishment of an architectural committee which will oversee conformity with building codes required by Latah County and the public health standards of the North Central District Health Department

15. The proposed four (4) lots will have private wells and septic systems.
16. John Bush, a retired geologist, submitted written testimony stating that the subject property is located over granite bedrock and that typically ground water in granite rock is located in open fractures and/or weathered zones. In his testimony he further stated that open fractures and weathered zones in granite are rarely continuous over large areas therefore in his opinion four wells per 130 acres will not impact the surrounding areas (Exhibit #56).
17. The applicant's submission materials included written testimony from John Monks, a licensed geologist in Washington and Idaho, which stated that due to the ground water storage characteristics of granitic rock the construction of four new wells in the proposed subdivision is unlikely to have a measurable impact on existing nearby wells (Exhibit #57).
18. The North Latah County Highway District (NLCHD) submitted written testimony that the proposal, if approved, would be required to dedicate an appropriate and sufficient amount of public right-of-way for public highway purposes, be made responsible to pay for and/or construct, as the District may determine, any access and/or public highway improvements occasioned by the Applicant's development of the rezoned property. The letter also states that of the three possible accesses to the property (Foothill, Lewis, and Nearing Roads) the NLCHD Board of Highway District Commissioners would prefer only one of them to be used and that it be the only access to the property if rezoned (Exhibit #2J).
19. The applicant submitted written testimony from the Latah County Sheriff's Department stating that they do not anticipate a significant impact or cost to the public for providing services to the proposed residential sites. The North Central District Health Department submitted written testimony stating the property could support subsurface septic systems for single-family dwellings on the large proposed lots. The Moscow School District submitted written testimony that they do not anticipate the proposed residential sites would result in adverse impacts upon existing service capabilities or the finances of the jurisdiction. No testimony was submitted from the Moscow Rural Fire District on potential impacts of the proposed residences on those public services.
20. Neighboring property owners testified that they had low producing wells and expressed concerns about the potential impacts to water supply from four additional residences.
21. The applicants' property is located within the "Rural" designation on the Comprehensive Plan Land Use Map. Testimony was given that the incremental development of this area, which has been farmed continuously, promotes a scattered pattern of growth that is inconsistent with the goal of protecting this area from conversion to more concentrated residential, commercial or industrial development.

**BASED ON THE ABOVE FINDINGS OF FACT, THE ZONING COMMISSION ENTERS
THE FOLLOWING:**

II. CONCLUSIONS OF LAW

1. The Community Design Element of the Latah County Comprehensive Plan seeks to ensure a pattern of planned growth which results in the orderly and attractive development of Latah County. There was discussion about the proposed rezone's consistency with this element, as existing agricultural activities abut the site to the south and west and the property is currently and has been farmed for the last 80 years. This element encourages low density residential development to occur in a pattern which minimizes conflicts with existing land uses and public service costs. The proposed four lots will range from a minimum of 7-acres to a maximum of 15-acres which is consistent with low density residential development. In addition, the remaining 95 acres of the subject property will remain in Agriculture/Forest and will be able to remain in agricultural production. This element also seeks to encourage landscaping of new developments to protect the existing character of the surrounding area and to preserve the rural character of Latah County. This proposal is consistent with these policies as the proposed lot sizes are lower density than the existing higher density residential developments. Additionally, the proposal includes commitments to donate 52 acres to the Palouse Land Trust with an option to continue farming operations and to retain 43 acres in a conservation easement for open space and the option to continue conventional agricultural uses.
2. The Population Element of the Latah County Comprehensive Plan seeks to ensure that population growth is accommodated in an orderly pattern. There was discussion that the area in proximity to the subject property has evolved towards residential development and that the proposed development's low residential density would be consistent with accommodating growth in an orderly pattern as the proposed mix of residential, open space, and agricultural use is compatible with the character of the surrounding properties.
3. The Housing Element seeks to ensure an adequate and attractive living environment to meet the needs of residents of different ages, family sizes, lifestyles, and income levels. The proposed development will include covenants which will include requirements for energy efficiency, water storage, fire prevention and open range. These requirements are also consistent with another policy of this element which is to encourage the construction of energy efficient housing. This element also seeks to ensure public safety by requiring all residential construction to conform with building codes and public health standards. The proposed development will include the establishment of an architectural committee which will oversee conformity with building codes required by Latah County and the public health standards of the North Central District Health Department.
4. The Economic Development Element seeks to promote economic diversification, foster agriculture and forestry, as well as provide for land uses appropriate to local and regional economic needs. The proposed development will provide four additional rural homesites which increases the assessed valuation of the subject property and associated tax revenue while leaving 95-acres in Agriculture/Forest which would allow for the continuation of existing agricultural uses.

5. The goal of the Public Services, Facilities and Utilities Element of the Latah County Comprehensive Plan is to provide an orderly pattern of development which will ensure adequate public facilities and services without excessive costs. The applicant received written testimony from the Latah County Sheriff's Department stating that the proposed rezone will not result in excessive costs in providing services to the site. The proposed lots will have private wells and septic systems which will not result in excessive costs to the public. The North Central District Health Department submitted written testimony stating the property could support additional subsurface septic systems for single-family dwellings on the large proposed lots. The Moscow School District submitted written testimony that they do not anticipate the proposed residential sites would result in adverse impacts upon existing service capabilities or the finances of the jurisdiction.

6. The Transportation Element seeks to promote an efficient and safe transportation system in Latah County. The NLCHD submitted written testimony that the proposal, if approved, would be required to dedicate an appropriate and sufficient amount of public right-of-way for public highway purposes, be made responsible to pay for and/or construct, as the District may determine, any access and/or public highway improvements occasioned by the Applicant's development of the rezoned property. The letter also states that of the three possible accesses to the property (Foothill, Lewis, and Nearing Roads) the NLCHD Board of Highway District Commissioners would prefer only one of them to be used and that it be the only access to the property if rezoned which is consistent with the Transportation Element policy to ensure that access onto public roads will not disrupt traffic flow.

7. The School Facilities and Student Transportation Element seeks to minimize the adverse effects of new residential development on school facilities and student transportation. The Moscow School District submitted written testimony that they do not anticipate the proposed residential sites would result in adverse impacts upon existing service capabilities or the finances of the jurisdiction therefore the proposed development is consistent with this element.

8. The Natural Resource Element seeks to ensure sound stewardship of the County's natural resources. There were no natural resource concerns with this development, except for potential groundwater issues, which Policy #3 requires that the County maintain sustainable groundwater resources and prevent the degradation of groundwater quality. The Zoning Commission received testimony concerning the poor water availability in the area and concluded that the potential for water scarcity is a characteristic of the area which is understood and acknowledged by residents. The proposed development will include covenants requiring 2,000 gallon water storage tanks and xeriscaping consistent with water conservation practices therefore it is consistent with this element.

9. The site is located within the Rural land use designation of the Comprehensive Plan Land Use Map. The proposed density is consistent with the land use element in that the rezone would allow a low density development in an area that is suitable for further low density residential development given the surrounding character of use of mixed agriculture, residential and forest.

10. The Special Areas, Hazardous Areas, Implementation, and Recreation Elements of the Comprehensive Plan were determined to be not applicable to the proposed development.

11. As required by §6.01.02(1) of the Latah County Land Use Ordinance, the Zoning Commission has reviewed the proposal as it relates to the Latah County Comprehensive Plan. The Zoning Commission concludes that this application, as conditioned, is consistent with goals and policies of the Latah County Comprehensive Plan.

12. As required by §6.01.02(2) of the Latah County Land Use Ordinance, the Zoning Commission has reviewed the proposal and determined that the rezone, as conditioned, is compatible with the surrounding area and the uses permitted in that area.

13. As required by §6.01.02(3) of the Latah County Land Use Ordinance, the Zoning Commission has reviewed the proposal and determined that the rezone will not impose costs upon the public that exceed the benefits.

14. As required by §6.01.02(4) of the Latah County Land Use Ordinance, the Zoning Commission has reviewed the proposal and determined that the rezone will not impose a significant burden to any public services.

15. As required by §6.01.02(5) of the Latah County Land Use Ordinance, the Zoning Commission has reviewed the proposal and determined that the rezone is not a spot zone.

III. DECISION

Based on the above Findings of Fact and Conclusions of Law, the Zoning Commission recommends to the Latah County Board of Commissioners approval of the application to rezone 40-acres of a 135-acre parcel of land from Agriculture/Forest (A/F) to Rural Residential (RR) with the following conditions to be set forth in a development agreement:

1. In substantial compliance with the application materials as submitted and presented.
2. In compliance with all local, state, and federal regulations.
3. There will be a maximum of four (4) lots and the minimum lot size is 7-acres.
4. The applicant will implement the proposed development's requirements for the following:
 1. Green building standards for residential structures as presented;
 2. Xeriscape landscaping as presented;
 3. No livestock permitted;
 4. No livestock fencing
5. Each lot will install a 2,000 gallon water storage tank prior to receiving a Certificate of Occupancy.
6. The lots will have individual wells and septic systems.
7. The proposed development will be in compliance with the requirements of the North Latah County Highway District as identified in Exhibit #2J and listed below:
 1. The proposed development is required to dedicate an appropriate and sufficient amount of public right-of-way for public highway purposes;
 2. The proposed development will be made responsible to pay for and/or construct, as the District may determine, any access and/or public highway improvements occasioned by the Applicant's development of the rezoned property.
 3. The North Latah County Highway District Board of Highway District Commissioners prefers that the proposed development use only one of the three possible accesses to the property (Foothill, Lewis, and Nearing Roads) and that it will be the only access to the property.

PASSED BY THE ZONING COMMISSION OF LATAH COUNTY THIS ____ DAY OF _____, 2009.

Wayne Sprouse, Chairman
Zoning Commission

Richard E. Shumway
PO Box 8877
Moscow, Idaho 83843
208-882-4389

Co-Represented and Assisted by:
Protect Our Water, Inc.
Corporate Agent: Sid Eder
1037 Tolo Trail
Moscow, Idaho 83843
208-883-4770
side@moscow.com

Before the Department of Water Resources of the State of Idaho

In the Matter of Application for
Permit No. 87-10022 in the
Name of **Ralph Naylor Farms,
LLC**

**Affidavit of Kevin M. Brackney
in support of
Petition for Hearing
By
Richard E. Shumway**

State of Idaho

County of Latah

ss.

Kevin M. Brackney, first being duly sworn, deposes as follows:

1. My name is Kevin M. Brackney.
2. My residence is located at 838 S. Lynn St., Moscow, Idaho.
3. I am an Idaho Registered Professional Geologist, No. 817.

4. I am a Certified Ground Water Professional by the National Ground Water Association, No. 120675.
5. I received a B.S. in Geology from Ft. Lewis College, Durango, Colorado, in 1978.
6. I received a M.S. in Hydrology from the University of Idaho in 1992.
7. I have twelve (12) year's experience as an exploration and mining geologist in nine (9) different states.
8. I have nine (9) year's experience in hydrogeology as a research scientist with the University of Idaho investigating biogeochemical remediation of ground water contamination.
9. I have four (4) year's experience as a hydrogeologist with the Nez Perce Tribe, Lapwai, Idaho.
10. I have published over fifteen (15) professional articles and reports relating to hydrogeology.
11. During and since my residence at the University of Idaho as a graduate student, research scientist, and concerned resident, I have become intimately familiar with local ground water hydrology, particularly with the shallow alluvial aquifers and their relationships to the Wanapum and Grande Ronde Basalt Aquifers.
12. I have detailed knowledge of the local ground water hydrology at five separate well fields in and around Moscow, and general knowledge of the wider Moscow-Pullman Aquifer.
13. I am also familiar with the regional geology of the Palouse, the Columbia Plateau, and the Pacific Northwest gained by numerous geological field trips, by reading geologic literature, by other educational activities, and by personal experience as a rock and mineral collector, an avid hiker, and an observer of nature.
14. In my employment with the Nez Perce Tribe, I am responsible for developing Source Water Assessments and Wellhead Protection Programs in aquifers hosted by the Grande Ronde Basalts, which are geologically

contemporaneous with the Grande Ronde Basalt Aquifer in the Moscow-Pullman Basin.

15. I was asked by a member of the Board of Directors of Preserve Our Water, Inc., to provide my professional opinion on the potential ground water impacts of the proposed Naylor Farms Water Permit Application No. 87-10022 on the following property:

Lot Two (2), Nearings Third Addition to Latah County, Idaho, as shown on the recorded plat thereof. (Hereinafter, Lot 2.).

16. Lot 2 is located north-north-west, over three hundred (300) feet in elevation up-gradient, and approximately one (1) mile from the proposed point of diversion on the Naylor Farms property at issue.
17. On February 5, 2005, I made an onsite inspection of Lot 2; I also investigated rock outcroppings in a gravel pit located about one-tenth (1/10) mile southeasterly from Lot 2; I also observed the topography and water drainage of the area in the general vicinity of Lot 2 and correlated those observations with a United States Geological Survey topographical map of scale 1:24000, namely the Robinson Lake Quadrangle.
18. In addition to my own observations, I also discussed the topography, geology, and hydrology of the Lot 2 site and the surrounding general area with Dr. William J. Elliot and others.
19. As a professional hydrogeologist, my further and general interest in the Lot 2 site is prompted by my deep concern about water level declines in both the Grande Ronde and Wanapum Aquifers.
20. In my professional opinion, the hydrologic resources, and hence the economic value of Lot 2, as well as the entire Moscow Basin, are potentially threatened by the proposed large scale pumping at Naylor Farms.
21. In summary the reasons for which I hold the just above opinion are as follows: In my professional opinion, the Wanapum Aquifer, which includes the underlying sediments lying above the Grande Ronde Basalt, is in hydrologic communication with the overlying shallow alluvial aquifers because:

- A. There is no evidence that the hydrologic sub-basins described by Phillip C. Nisbet in the Idaho Department of Water Resources Water Permit Application 87-10022 proceedings exist in sense that Nisbet described; there is no geologic evidence that the alleged D Street granitic ridge exists; the Moscow Pullman Basin is hydrologically, continuous because it is open at depth to the west. Therefore, in my professional opinion, **Conclusion of Law No. 3 in the Preliminary Order issued in this matter is in error.**
- B. The Idaho Department of Water Resources Preliminary Order issued in the 87-10022 permit proceedings dated December 1, 2004, hereinafter Preliminary Order, states that the sub-basins alleged by Nisbet were independently confirmed in a presentation given by geologist John Bush. I disagree with this conclusion. John Bush does describe a northwest trending topographic high in the vicinity of Pullman, Washington. There is some hydrologic evidence that this topographic high isolates Pullman Wells from Moscow Wells, but this topographic high will not isolate Moscow wells nor Latah County rural wells from the proposed drawdown effects at Naylor Farms. Therefore, in my professional opinion, this is further evidence that **Conclusion of Law No. 3 in the Preliminary Order is in error.**
- C. The Preliminary Order concludes that the Moscow City Wells are up-gradient from Naylor Farms. I disagree with this conclusion. As described above the Naylor Farms are interpreted to be wholly contained within the Moscow Basin. It is believed that the cone of depression created by large scale pumping of wells completed in the Wanapum Aquifer will overwhelm the natural hydraulic gradient. Because Naylor Farms is located in a ground water recharge zone on the margin of Moscow Mountain (the Palouse Range), it is more likely that Naylor Farms are up-gradient from the Moscow wells. Nisbet estimated that the water level in the Naylor boring was 200 ft higher than Moscow wells (Permit Proceedings, Naylor Exhibit 11a, p. 4). I have reviewed Naylor's data and estimated a hydraulic head differential of approximately 150 ft between the Naylor boring and the Wanapum Aquifer at University of Idaho Well No. 2 (See **Figure 1** below). Because ground water moves from higher potential to lower potential the Naylor boring should be interpreted as being up-gradient of Moscow wells. Therefore in my professional opinion, **Finding of Fact No. 9 in the Preliminary Order is in error.**

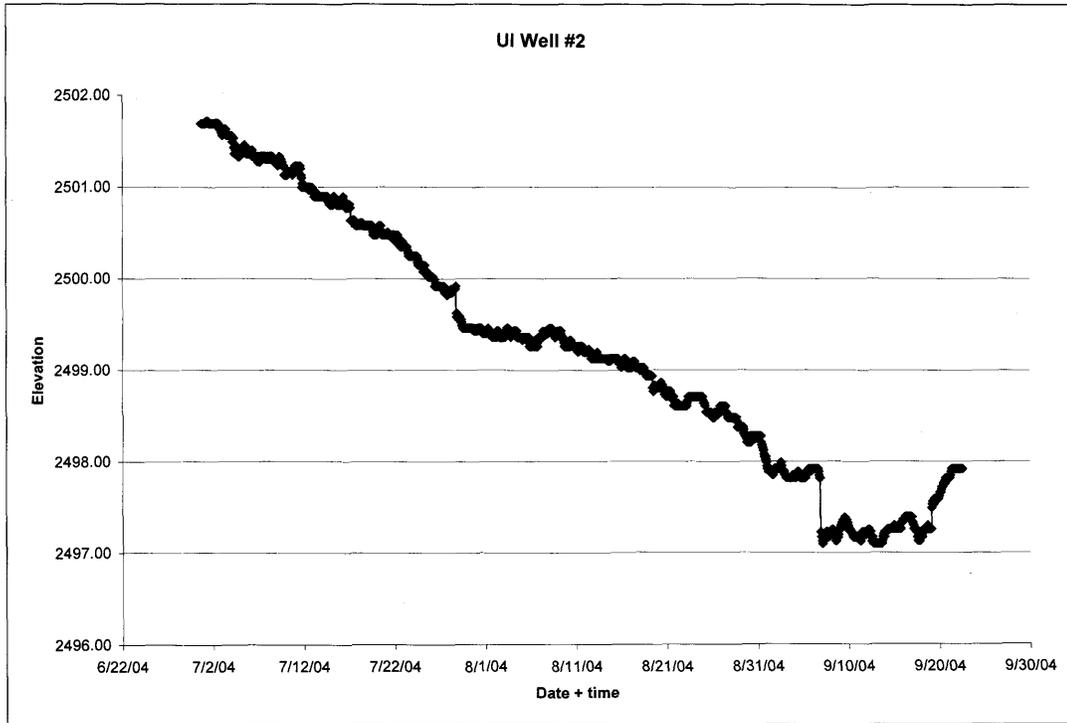


Figure 1. Well hydrograph for University of Idaho Well No. 2. Data received from Nicole Baden, University of Idaho, Department of Geology, personal communication, 2005.

D. The Wanapum Basalt does not confine the aquifer near the margins of Moscow Mountain. This is demonstrated by an east-west geologic cross-section by John Bush where the Wanapum Basalt does not directly contact the Moscow Mountain granitic rocks (Permit Proceedings, Naylor Exhibit 13, p. 3). Thus, simply requiring Naylor Farms to selectively case-out aquifers above the basalt **will not** prevent the drawdown of the rural wells that are laterally adjacent to the basalt. Therefore, in my professional opinion, based on independent geological analyses, **Conclusion of Law No. 4 in the Preliminary Order issued in this matter is in error.**

22. Therefore, in my professional opinion, **Conclusions of Law Nos. 8 and 9 in the Preliminary Order are in error.**

23. In fact, the best, most current geological evidence indicates that the proposed water allocation and use will interfere with the local public interest in the public water resources available and such allocation and use is also contrary to good conservation of water resources practice as mandated by Idaho statute and Idaho Department of Water Resources rule.
24. Adjacent private wells in the general area of Naylor Farms are not subject to the possible protections of the "Protocol" signed by Naylor Farms and the Cities of Moscow and Pullman.
25. Potential dewatering of these near by adjacent private wells and up-gradient private wells will create an undue economic hardship resulting from declining property values: many of these wells cannot be replaced at any cost.
26. Therefore in my professional opinion, the above are reasons why **Conclusions of Law No. 8 in the Preliminary Order is in error.** The public interest in the water resource at issue and the public economic interest in that water resource will be adversely impacted.
27. It is my professional understanding, based in part on information presented at the Moscow Water Summit of 1992, that the rationale for the development of the Grande Ronde Aquifer in the 1960's occurred because of a significant water level decline in the Wanapum Aquifer.
28. It has been clearly demonstrated that since that time that while the deeper Grande Ronde Aquifer was experiencing water level declines of one and one-half to two (1.5 – 2.0) feet per year, the Wanapum Aquifer water levels were consistently raising.
29. Hence, it was concluded that since the well hydrographs from the upper Wanapum Aquifer showed seasonal fluctuations, this indicated ground water recharge was occurring during and just after the spring runoff, resulting in higher ground water levels in the Wanapum Aquifer.
30. No such seasonal fluctuations were apparent from well hydrographs from the Grande Ronde Aquifer.

31. One of the major decisions which resulted from the Moscow Water Summit of 1992 was the resolution to begin pumping an increasing portion of Moscow's water supply from the Wanapum Aquifer.
32. A review of well hydrographs from Moscow Well No. 2 producing water from the Wanapum Basalt documents that water levels increased in the Wanapum Aquifer during the period from 1975 through 1990 a total of twenty (20) feet (See **Figure 2** from the 1998 *Palouse Basin Annual Water Use Report*, Prepared for Palouse Basin Aquifer Committee, Steve W. Gill Executive Secretary/Technical Advisor, App. C, p. 25, May 1999).

1998 PBAC Palouse Basin Annual Water Use Report

The ground water level in wells developed in the Wanapum Basalt fluctuates more than does the ground water level in wells developed in the Grand Ronde Basalt (figure 20). In 1996, ground water levels increased slightly. This increase may be attributed to record precipitation during 1995 and 1996 that resulted in an increase in ground water recharge. The ground water levels increased again in 1998. Moscow Well 3 showed an increase of 1.9 feet in ground water elevation while Moscow Well 2 showed an increase of 18.0 feet that can be attributed to the installation of a new ground water level measurement device (Scallorn, 1999).

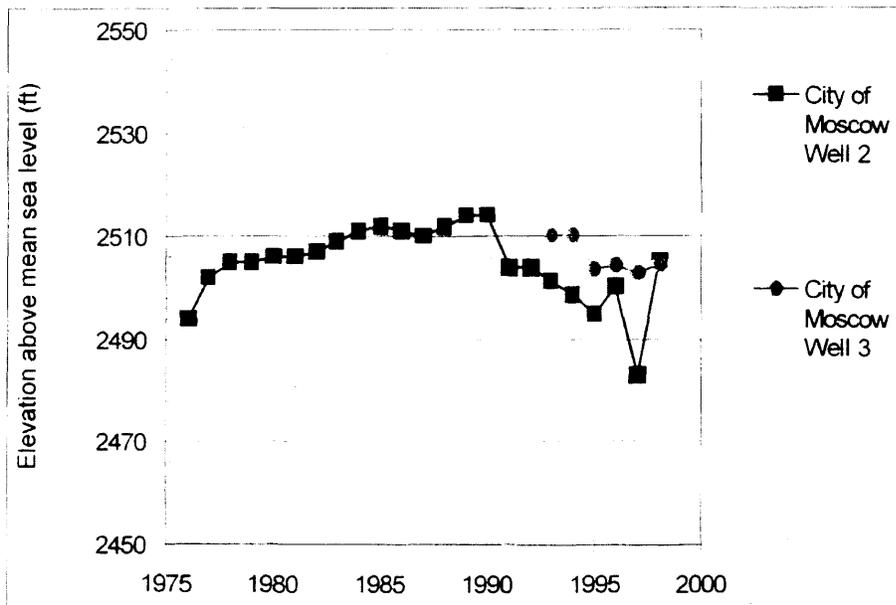


Figure 20: Ground water level elevations in selected wells developed in the Wanapum basalt for the City of Moscow during the period 1976-1998.

Figure 2. Ground water levels.

33. The Water level in Moscow Well No. 2 reached a maximum elevation of approximately twenty-five hundred and fourteen (2,514) feet. [All

elevations given in this document are from mean sea level (MSL) unless otherwise indicated.]

- 34. Aquifer pumping increased in 1990 and the water levels in both Moscow Wells No. 2 and No. 3 began falling through 1995 when water level reached an elevation of two thousand and forty five (2,495) feet, thus documenting a water level decline in Well No. 2 of nineteen (19) feet during this five (5) year period .
- 35. The relationships just above were also presented by Dale R. Ralston, Professor Emeritus of Hydrogeology, University of Idaho in a Power Point Presentation found on the Idaho Department of Water Resources Web Site [http://www.idwr.state.id.us/Committee/June%203%20Ralston_Palouse_files/frame.htm], Slide 23 and presented in **Figure 3** below.

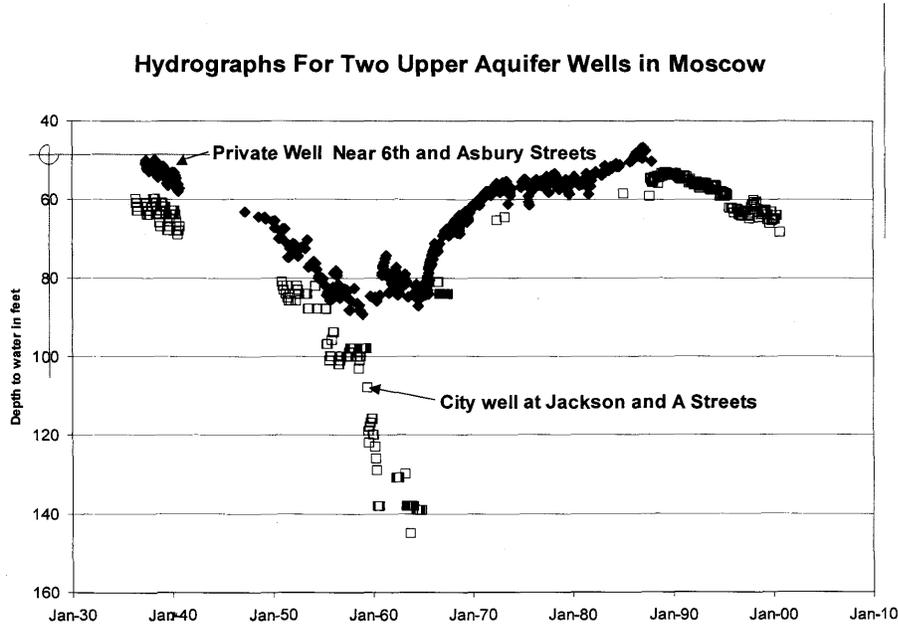


Figure 3. Historic water level decline and recovery for the Wanapum Aquifer (Dale R. Ralston, Idaho Department of Water Resources Web site).

36. The Wanapum Aquifer was seriously over-pumped in the 1960s and well production was switched to the underlying Grande Ronde Aquifer. For example, the City of Moscow Well No. 6, initially completed in the Wanapum Aquifer, illustrates the potential effects on the Wanapum Aquifer of the proposed Naylor well. **Figure 4** is a well location map showing City Well No. 6 on the north side of Moscow and **Figure 5** ~~Error! Reference source not found.~~ is the well log for City Well No. 6 obtained from the IDWR Internet website.

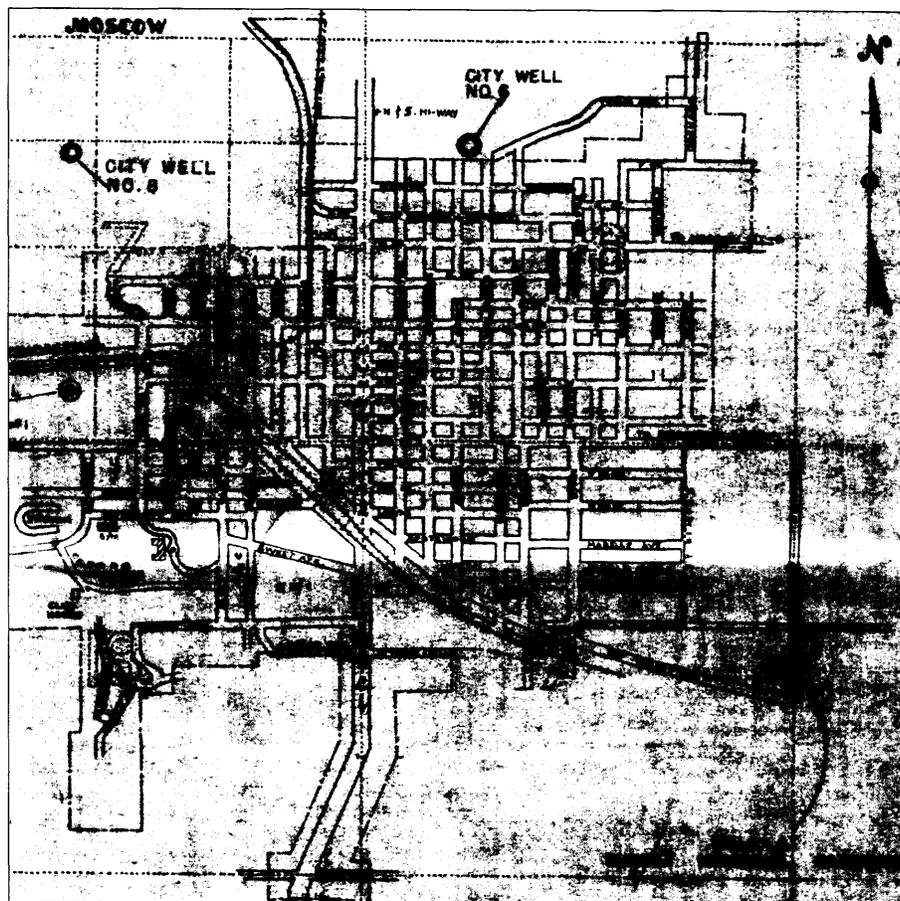


Figure 4 Location map for Moscow Well No. 6.



87-3033
87-64-N-1-1

RECEIVED
APR 29 1964

City of Moscow, Idaho

Well No. 6 - Domestic

Department of Reclamation

SE 1/4 of 39A SW

Drilled originally in 1955 - Driller - A.A. Durand and Son
Walla Walla, Washington

Depth	- 280 feet
Static	- 110 Feet
Capacity	- 1200 GPM
Drawdown	- 20 feet
Temp	- 54° F

Well went dry in December, 1957

Started present well February, 1958

Complete May, 1960 Driller - Oliver Zinkgraf

Depth	- 1305 feet
Static	- 275 feet
Drawdown	- 25 feet
Capacity	- 1150 GPM
Water Temp	- 72° F

14 inch casing from surface, sealed in basalt at 905 feet

10 inch perforated liner - 1295 - 1305

used

SE 1/4 of
NE 1/4 5.7 39A SW

87

Figure 5. Well log for City of Moscow Well No. 6.

-
37. Figure 5. shows that Moscow No. 6 was drilled to a depth of 280 ft in 1955. The well produced 1200 gallons per minute with 20 ft of drawdown. **Figure 5** then also shows that in 1957 the well went dry.
 38. The historical evidence from Moscow Well No. 6 illustrates precisely why the Naylor well permit should be denied. The Wanapum Aquifer, while capable of providing significant quantities of water over short time intervals (e.g. 2 years), cannot sustain the pumpage of the magnitude of the Naylor application without incurring significant declines in ground water levels. If the Naylor water permit is granted I predict that many of the neighboring private wells will go dry. Therefore, in my professional opinion, **Conclusions of Law No 4 in the Preliminary Order is gravely in error.**
 39. During the proceedings at issue, Phillip C. Nisbet provided a written report in which he alleged several “sub-basins.” He alleged that the alleged, so-called “Naylor Sub-basin” was hydrologically isolated from the alleged, so-called “Moscow Sub-basin” (Permit Proceedings, Naylor Exhibit 11a).
 40. I have reviewed the evidence for these sub-basins, looked at the “outcrops” referenced in his report, and discussed the evidence with John Kauffman who also reviewed the evidence (See **Figure 6**, Letter from Bush, et al, 2004 below).

L. Glen Saxton, P.E.
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-8098

RECEIVED
December 22, 2004
DEC 27 2004
LATAH COUNTY
COMMISSIONERS

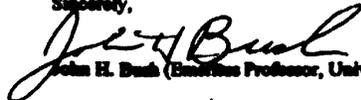
Dear Mr. Saxton,

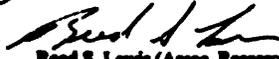
We would like to comment on the recent granting of Permit no. 87-10022 to Ralph Naylor Farms near Moscow and, in particular, clarify misconceptions regarding the geology of this area on which the Findings of Fact were based. Specifically, we would like to note the following:

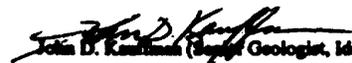
- 1) The sequence of sediments the Naylor wells will be pumping from is laterally equivalent to the upper Grande Ronde Basalt flows in Pullman and to a 200 ft thick sequence of sediments beneath the Wanapan Basalt in Moscow. Groundwater connection has not been proven, but conversely no evidence exists to indicate there is not a connection.
- 2) The data presented for the "D Street ridge" are weak at best and the presence of the structure is exceedingly speculative. Rocks in yards and retaining walls are hardly evidence of bedrock at shallow levels and are probably no more than ornamental stones. Even if such a ridge exists in the subsurface, both the city of Moscow and the University of Idaho have deep wells in the basin and sediment sequence north of the purported ridge.
- 3) Water levels are higher in the drill holes at Naylor Farms than they are in wells in Moscow, indicating that the Moscow wells are not up gradient from the Naylor Farms.
- 4) Much of the background geologic information submitted by Naylor Farms, including the origin of the Columbia River basalt, is either wrong or irrelevant, and does not reflect current geologic thinking. Much of the information was taken directly from a discredited popular book, whereas the primary literature was ignored.
- 5) Most importantly, the applicant gave the false impression that work by Dr. John Bush and Dean L. Garwood, of the University of Idaho, independently corroborates the aquifer model developed by Naylor Farms. The work by Bush and Garwood over the past 10 years does not support the specifics of the geologic conclusions drawn in the application. Isolated facts were extracted from their work, placed out of context, and used to support a highly speculative model.

We suggest that the way to obtain an impartial view of the hydrogeology in this region is to have a competent geologist from outside the area evaluate the geologic report from Naylor Farms. Three individuals that come to mind are Bruce Otto (Boise, ID), Jeff Brown (Manitowoc, WI), and Steve Reidel (Benton City, WA). At the very least we would like the Department of Water Resources to realize that a lack of hydrologic connection between the Naylor Farms area and aquifers under Moscow and Pullman has not been demonstrated, as asserted in the Findings of Fact.

Sincerely,


John H. Bush (Business Professor, University of Idaho)


Reed S. Lewis (Assoc. Research Geologist, Idaho Geological Survey)


John D. Kaufman (Senior Geologist, Idaho Geological Survey)

Cc: Paul Kimmell, Latah County Commission Chairman; Larry Kirkland, PBAC Chairman

Figure 6. Letter from John H. Bush, Reed S. Lewis, John D. Kaufman

41. In short there is very little evidence, if any, for the existence of these hydrologic sub-basins.
42. The Nisbet alleged, so-called "outcrops" on "D Street" in Moscow consist of retaining walls of quartzite and basalt and are believed to be imported along with other concrete, brick, and railroad tie retaining walls also in the area.
43. The Nisbet alleged, so-called "D St. Ridge" is simply one of many eroded Palouse Hills that exist in Moscow.
44. Were it not included within the Moscow City Limits, these hills likely would have been included in the Canfield Rogers Clay Deposit identified by the United States Bureau of Mines in the documentation of the high alumina clay exploration conducted in the Moscow area during the 1950s (*Clay Deposits of North Idaho*, Charles R. Hubbard, 1956, Idaho Bureau of Mines and Geology, Pamphlet No. 109).
45. In the subsurface, the Wanapum Basalt forms a relatively horizontal layer as evidenced by the flow top elevation in the Naylor boring (estimated at 2490 ft) being similar in elevation as that of the Wanapum Basalt in Moscow Well No. 2, twenty-five hundred and thirty-two (2,532) feet.
46. It is believed that the Moscow Mountain southern facing escarpment has approximately the same slope below ground as above ground, and that the pre-basaltic topographic relief on the crystalline rocks was extreme.
47. For example, the elevation of crystalline basement rocks in Moscow Well No. 8 is eleven hundred and twenty-eight (1,128) feet.
48. Approximately nine (9) miles to the west at Washington State University Well No. 7, intercepted granite is found at an elevation of two hundred and sixteen (216) feet; this calculates to a paleo-stream gradient for an ancestral Paradise Creek of approximately 100 ft per mile. John Bush graphically describes the pre-basalt granitic topography in Naylor, Exhibit 13, p. 7.
49. It has been well documented by John Bush and others that the Wanapum Basalt does not make direct contact with the crystalline rocks on Moscow Mountain (See **Figure 7** below, geologic cross-sections by John Bush from Dale R. Ralston Idaho Department of Water Resources Power Point

presentation,
http://www.idwr.state.id.us/Committee/June%203%20Ralston_Palouse_files/frame.htm, Slide 18).

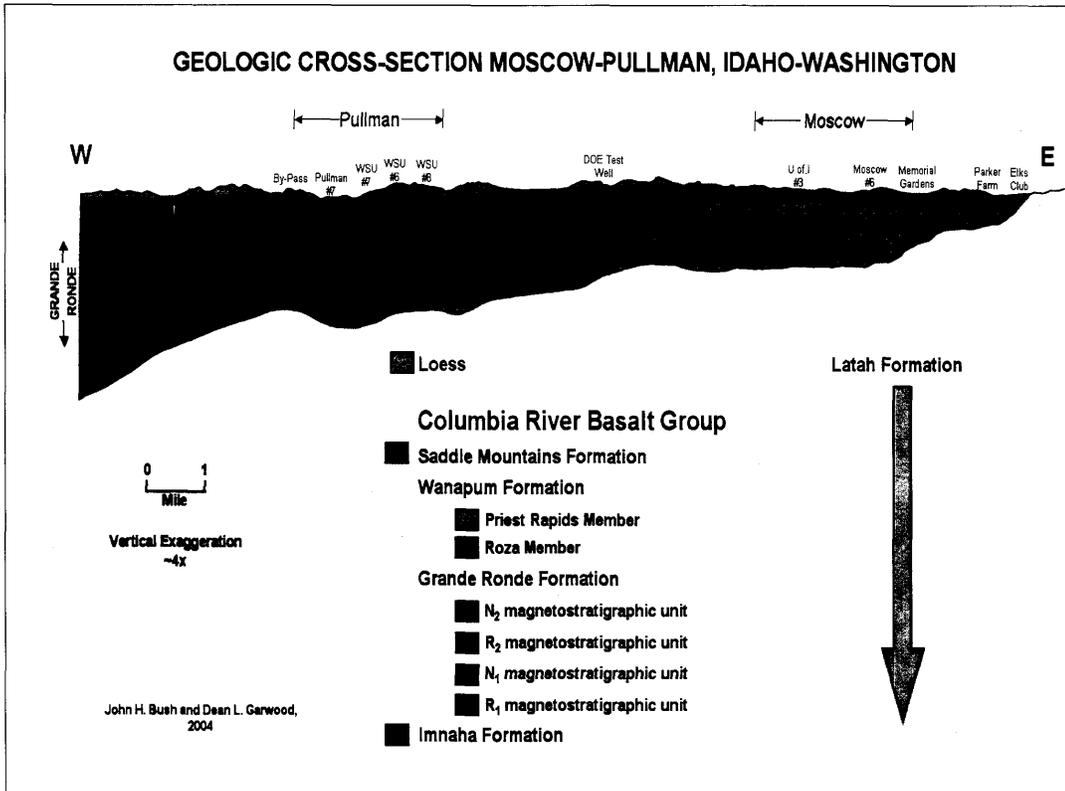


Figure 7. Cross-section adapted from John Bush.

50. The Wanapum Basalt does not form an effective confining layer around the margins of the Moscow Basin near the granitic outcrops. An apron of sediment eroded from the granitic uplands and deposited on the flanks of the Palouse Range prevented the direct contact of the basalt with the granite. These formations are designated as the Latah Formation below the Wanapum Basalt and the Sediments of Bovill above the basalt.

51. Some of the best evidence of direct hydraulic communication with surface water near the flanks of the mountain is from the Elks Club golf course well whose location is shown on the east edge of the cross-section shown in **Figure 7**. A well hydrograph is presented for Elks Golf Course well in **Figure 8** for the period December 1999 through March 2000. Ten feet of ground water recharge occurred during this period documenting rapid infiltration of surface water during the spring runoff. The Elks well is constructed in a similar manner to that proposed in the Naylor Farm Permit. Because surface water enters the ground so easily on the margin of the basin the converse is also true: ground water pumping will directly impact shallow ground water and surface streams.

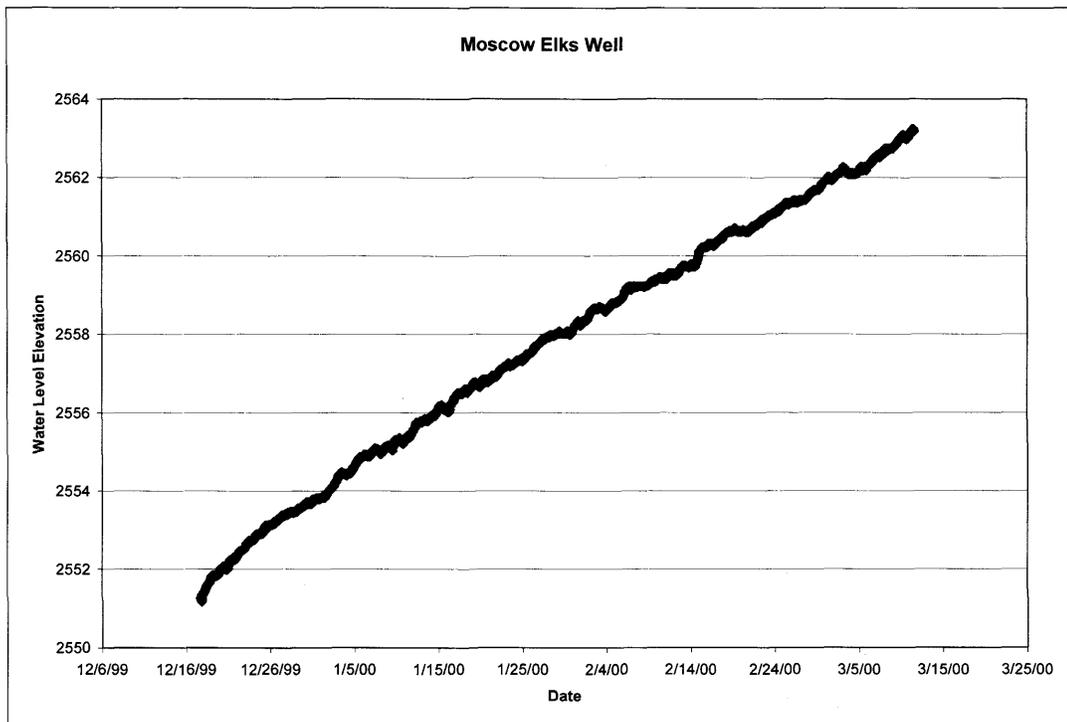


Figure 8. Well hydrograph for Moscow Elks Golf Course well showing ground water recharge (source, Nicole Baden, University of Idaho Department of Geology, personal communication, 2005).

52. Any aquifer drawdown that occurs as a result of pumping under the basalt will be observed in wells completed in granitic hosted aquifers in hydraulic communication with the Wanapum Aquifer, and in rural wells completed in Sediments of Bovill/Latah Formation found in the areas on the margins of the basalt flow.
53. Therefore, in my professional opinion proposed pumping of the proposed Naylor Farms well at an anticipated rate of over one-thousand (1,000) gallons/minute will likely have a significant adverse impact on water level elevations of **all** the surrounding wells.
54. Because many of these wells are completed in fractured granite and located on the uplands, a hydrostatic pressure drop caused by a decrease in ground water level (which would occur because of the proposed voluminous pumping down-gradient at Naylor Farms) would adversely impact these up-gradient wells significantly; **thus the pumping at Naylor Farms could potentially cause these wells to go dry permanently or periodically, or in the least, cause their annual maximum outputs to be less than needed for normal household use.**
55. A general rule of thumb that applies in these types of circumstances is that the probability of finding water in crystalline rock significantly decreases at depths greater than 300 ft below ground surface, and continues to decrease at greater depths.
56. This significant drop in probability occurs because the weight of the overburden of the upper level rock begins to close off the fractures occurring at greater depths; **because of this depth limitation, many homeowners may be unable to replace their existing wells by simply drilling deeper.** Therefore, in my professional opinion, **Conclusion of Law No. 4 in the Preliminary Order is gravely in error.**
57. The water level in Naylor Farms test boring was stated to be 30 ft below ground surface and was presumably measured on the drilling completion date of September 30, 2003 (Permit Proceedings, Naylor, Exhibit 11a, p. 4). The approximate location of the boring and elevation were estimated to be 2680 ft based on the United States Geological Survey Robinson Lake Quadrangle Map. This implies that the water level elevation is approximately 2650 ft. A review of well water level data for Moscow

Wanapum Aquifer wells indicates that the current water level elevation is approximately 2500 ft ± 5 ft. (See Figure 2 above).

58. Naylor Farms are up-gradient from the Moscow Wells because ground water moves from higher potential to lower potential. Bush's interpretation of surface water flow to the north, as described by Nisbet (Permit Proceedings, Naylor Exhibit 11, p. 24) may be correct for ground water at pre-development equilibrium conditions. However, because of the extensive ground water pumping that is occurring in the Moscow Basin, equilibrium conditions cannot be assumed. Therefore, in my professional opinion, **Finding of Fact No. 9 in the Preliminary Order is in error.**
59. Another significant factor affecting the drawdown of the aquifer is the presence of negative hydrologic boundaries that likely exist due to the presence of the crystalline rocks forming Moscow Mountain.
60. When the potentiometric ground water surface intercepts the non-water bearing (or low yielding) granitic rocks, the measured aquifer drawdown will be significantly greater than what might be predicted based on the aquifer properties of the sediments and basalts alone.
61. This phenomenon may be explained mathematically by the partial differential equation for radial flow to a well, which has as a boundary condition an aquifer of infinite horizontal extent (*Groundwater*, Freeze R. Allen and John A. Cherry, Prentice Hall, Inc., 1979, p. 315-317.)
62. Therefore, the allocation and use of the water proposed in the Preliminary Order is likely to adversely affect the many low yielding up-gradient wells, and therefore have seriously adverse economic and lifestyle impacts on the owners of real property up-gradient from Naylor Farms, such as Lot 2.
63. Therefore, in my professional opinion, **Conclusions of Law Nos. 3, 4, 8, and 9 of the Preliminary Order are gravely in error.**

Sworn to by:

/s/ Kevin M. Brackney

Kevin M. Brackney, Affiant

On this 16th day of February, 2005, a person known to me to be Kevin M. Brackney, personally subscribed, swore to, and acknowledged before me this affidavit.

In witness thereof, I have hereunder set my signature and affixed my official seal this 16th of February, 2005.

/s/ Michelle L. Stapleton

Notary Public, State of Idaho, County of Latah

My commission expires September 13, 2006

Richard E. Shumway
PO Box 8877
Moscow, Idaho 83843
208-882-4389

Co-Represented and Assisted by:
Protect Our Water, Inc.
Corporate Agent: Sid Eder
1037 Tolo Trail
Moscow, Idaho 83843
208-883-4770
side@moscow.com

Before the Department of Water Resources of the State of Idaho

In the Matter of Application for
Permit No. 87-10022 in the
Name of **Ralph Naylor Farms,
LLC**

**Affidavit of William J. Elliot, PhD
in support of
Richard E. Shumway Petition**

State of Idaho

County of Latah

ss.

William J. Elliot, first being duly sworn, deposes as follows:

1. My name is William J. Elliot.
2. My residence is located at 3281 Foothill Road, Moscow, Idaho 83843.
3. I am a professional engineer registered in the State of Ohio, registration number E-53801.

-
4. I hold a PhD in Agricultural Engineering from Iowa State University.
 5. I have coauthored three books on soil and water engineering and hydrology:
Environmental Hydrology, Edited by Andrew D. Ward and William J. Elliot, with William J. Elliot sole author of two chapters, and contributor to two others. Lewis Publishers, Inc., 1995;
Soil and Water Conservation Engineering, 4th Edition, by Glenn O. Schwab, Delmar D. Fangmeier, William J. Elliot, and Richard K. Frevert, Wiley, 1992, (5th Edition to be published later this year);
Soil and Water Management Systems, 3rd Edition, by Glenn O. Schwab, Delmar D. Fangmeier, and William J. Elliot, Wiley, 1995;
 6. I have also authored or coauthored around 100 published articles in the field of environmental engineering and related subjects.
 7. I have been and am currently researching Idaho Department of Water Resources well logs in the area of Naylor Farms and also researching other related geological and hydrological data.
 8. To date, for instance, I have analyzed and plotted over 50 IDWR well logs in the area of Naylor Farms.
 9. On February 5, 2005, I made an onsite inspection of the property described thusly:

Lot Two (2), Nearing Third Addition to Latah County, Idaho, as shown on the recorded plat thereof. (Hereinafter, Lot 2.)
 10. Lot 2 is located approximately one (1) mile slightly upslope and northerly from the Naylor Farms property at issue.
 11. The purpose of the onsite inspection of Lot 2 was to determine whether the Naylor Farms Water Permit Application Number 87-10022 proposed water allocation would impact the water resources available to Lot 2.
 12. I am familiar with the geology and groundwater and surface water hydrology of the general area and the immediate area surrounding Lot 2.

-
13. Based upon my professional observations, research, and consultation with other well-known, well-respected, degreed, and registered professional geologists and hydrologists, I believe that it is probable that a direct connection exists between any water removed at Naylor Farms and water availability at Lot 2.
 14. Based upon my professional knowledge, experience, observations, and a study of the wells in this area through the Idaho Department of Water Resources well logs, it is my professional opinion that it is probable that the proposed Naylor Farms water pumping allocation would adversely impact the amount of water available for normal use on Lot 2, and further, could cause a well if located on Lot 2, and intended to supply sufficient water year-round for normal household use, to fail to meet that need.
 15. I have affixed my Professional Engineering Stamp directly below my signature.

/s/ William J. Elliot

William J. Elliot, Affiant

[Professional Engineering Stamp]

On this 7th day of February, 2005, a person known to me to be William J. Elliot, personally subscribed, swore to, and acknowledged before me this affidavit.

In witness thereof, I have hereunder set my signature and affixed my official seal this 7th of February, 2005.

/s/ Jon J. Kimberling

Notary Public, State of Idaho, County of Latah

My commission expires 10/23/06.